

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JANUARY 18, 2002

The meeting was held on Friday, January 18, 2002, at the Flamingo Resort Hotel & Conference Center, 2777 Fourth Street, Santa Rosa, California, commencing at 9:00 AM with the following members constituting a quorum:

Ken Trongo, President
Jean Melton
Bill Morris
Mustapha Sesay
Gregory Traum

Board members Karl Thurmond and Michael Roth were not present

Board staff present:

Kelli Okuma, Registrar
Susan Saylor, Assistant Registrar
Dennis Patzer, Enforcement
Barbara Howe, Records Management

Departmental staff present:

Donald Chang, Legal Counsel
Lynn Morris, Deputy Director, Board Relations

II. PUBLIC HEARING TO ADOPT SECTION 1937.17, AND AMEND SECTIONS 1996 AND 1996.2 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS RELATING TO CONSUMER NOTIFICATION THAT PRACTITIONERS ARE LICENSEES OF THE BOARD, AND TO AMEND THE INSPECTION REPORT FORM AND THE NOTICE OF WORK COMPLETED AND NOT COMPLETED FORM

Mr. Chang announced for the record that the date was January 18, 2002, the time was 9:03 AM and the meeting was being held in Santa Rosa. He stated a quorum of the Board was present, a notice had been filed with the Office of Administrative Law and a copy sent to all interested parties.

Mr. Chang announced the hearing was being held to consider the adoption of Section 1937.17 and proposed amendments to regulation Sections 1996 and 1996.2 as outlined in the public notice. The hearing would be open to take oral testimony and/or documentary

evidence by any person interested in these regulations. All oral testimony or documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before formally adopting the proposed amendments to the regulations, or any recommendations for change that might evolve as a result of the hearing.

Mr. Chang announced that after all interested parties had testified the testimony phase of the hearing would be closed and the Board would then consider the appropriate action to be taken for any regulatory changes. He asked if there were any questions concerning the nature of the proceedings or the procedures to be followed. As there were none, he opened the hearing to the public for oral testimony and/or documentary evidence.

Proposal to Adopt Section 1937.17

Dave Franklin, Franklin Seminars, commented that:

- He was in support of the notification requirement although he thought there was a typographical error in the language. He asked that “services are required” be changed to: “services are requested”.

Proposal to Amend Sections 1996 and 1996.2

John Van Hooser, Ultratech Division, commented that he was in favor of the notification but wanted to comment on the January 10, 2002 letter from J. Luis De La Cruz, received by the Board on January 16, 2002, as follows:

- Mr. De La Cruz had the 10 years this proposal had been going through committee hearings to make his objections instead of waiting until the last minute to send in a letter.
- He referenced page one under Necessity, second paragraph, “... due to the lack of any approved format that could provide uniformity among the companies at State level,” commenting that Mr. De La Cruz was referring to how someone would fill out the form, not commenting on the report form itself.
- Referencing page two, number 5: “.... have been part of the report from the beginning of time,” he stated that the whole purpose of changing the form was to move into modern technology and be up to date, not keep things as they were thirty years ago.
- Referencing the second paragraph under Clarity, regarding the use of 8½” by 11” paper, he stated that the report form does not speak to size because that needed to be covered by regulations.
- Referencing the acts quoted under Authority concerning the foundation sketch, he commented that Mr. De La Cruz was unclear in his comments.

James H. Steffenson, past member of the Structural Pest Control Board, commented that:

- Mr. De La Cruz wrote in the first paragraph of his letter there was no reason for the proposed action. He felt there certainly was reason, as the new form would comply with everything required by the act.

- He commented that regulations addressing where to place items on the form could be put into effect after the form was adopted. Then Mr. De La Cruz could have his shot at all the things brought forth in his letter.
- In paragraph four, Mr. De La Cruz wrote about the tag, saying there would not be as much space. He commented that space had been allocated and if more was needed the body of the report could be used.
- He did not agree with Mr. De La Cruz that removing “This is an inspection report only - not a notice of completion” would be making things uncertain to a consumer in regards to a reinspection.
- He felt there were a number of items in the letter that were misapplied.
- He spoke in favor of the proposed report form.

Larry Musgrove, Western Exterminators, and Chairman of the Inspection Report Committee, urged the Board to vote for the form’s approval.

There being no further public comments, Mr. Chang concluded the regulatory hearing and opened up the proposals for Board discussion.

Proposal to Adopt Section 1937.17

As there were no comments from the Board, Mr. Chang recommended the editorial typographical error in the language be modified.

Mr. Sesay moved and Ms. Melton seconded to authorize staff to modify the proposed language of section 1937.17, make the modifications available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed section as follows, provided there are no adverse public comments:

1937.17. Customer Notification

Every licensee shall provide notice to the licensees’ clients or customers of the fact that he / she is licensed by the Structural Pest Control Board. Notice shall be provided by, but not limited to, any of the following methods:

- (1) Verbally at the time that services are ~~required~~ requested.
- (2) Company business card identifying person as a licensee of the Structural Pest Control Board.
- (3) Structural Pest Control Board license number printed on Wood Destroying Pest and Organisms Inspection Report form.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 138 and 680, Business and Professions Code.

Passed unanimously.

Proposal to Amend Sections 1996 and 1996.2

Mr. Morris asked for clarification on whether the proposed form was more concise, easier for the consumer to read, and computer and fax friendly.

Larry Musgrove, Chairman of the Inspection Report Committee, responded that the proposed form was indeed more concise, easier for the consumer to read, and computer and fax friendly.

As there were no further comments from the Board, Mr. Chang recommended a motion to adopt the proposed amendment of sections 1996 and 1996.2.

Ms. Melton moved and Mr. Traum seconded to amend sections 1996 and 1996.2 as follows:

§1996. Requirements for Reporting All Inspections Under Section 8516(b).

(a) A written inspection report conforming to section 8516(b) of the code (See Form No. 43M-41 (Rev. ~~8/97~~ 10/01, required use effective July 1, 2003) at the end of this section) shall be prepared and filed with the Board regardless of whether the registered company has offered to perform the inspection without charge. The granting of permission to make an inspection shall be deemed a request to make an inspection.

(b) Reference to price may be deleted from the copy of the report filed with the Board provided this is the only difference between the copy filed with the Board and the copy that is delivered to the person who requested the inspection or to his or her designated agent.

(c) The failure or refusal of the person ordering the inspection or of his or her designated agent to pay for such inspection or report shall not excuse a registered company which has commenced an inspection from preparing and delivering a report and filing a copy thereof with the Board.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8516, Business and Professions Code.

§1996.2. Standard Notice of Work Completed and Not Completed.

A written standard notice of work completed and not completed form conforming to section 8518 of the code and Form No. 43M-44 (Rev. ~~8/97~~ 10/01, required use effective July 1, 2003) found at the end of this section shall be prepared and filed with the Board.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8518, Business and Professions Code.

Passed unanimously.

I. ROLL CALL / FLAG SALUTE

Ms. Saylor read the roll call. Mr. Trongo led the flag salute.

Lynn Morris, Deputy Director, Department of Consumer Affairs (DCA), Board Relations, commented on what a pleasure it was for her to attend Structural Pest Control Board meetings. She stated she wanted to get to know all the Board members better and reiterated the responsibilities of the Board Relations Office of DCA: first, to help approve appointments, educate Board members and then assist them; second, to provide an overview and liaison with the 31 Boards within DCA, review regulations and make recommendations during Sunset Review, reflect the policies of the administration to each Board and take issues back to the Department; third, to act as a resource for information.

Ms. Morris stated there has been a uniform general complaint disclosure policy with the Department since approximately 1979, which serves as the guideline on complaint disclosure for consumer inquiries. Because of the lengthy process to investigate a complaint and refer it to the Office of the Attorney General, the Department has been holding a series of hearings regarding a new complaint disclosure policy, receiving input from businesses and consumer groups. Ms. Morris provided the Board members with a matrix showing the structure of each Board and its complaint disclosure policy. Most Boards release information to the consumer only after the complaint has been formally filed with the Office of the Attorney General. Therefore, a company or licensee may have numerous complaints, but that information is not released until after an accusation has been filed. She stated the Department would like each Board member to review the issue of complaint disclosure in respect to individual consumer complaints and determine at what point complaint information should be released to consumers.

Mr. Trongo reported that the Board members would review the information Ms. Morris provided and would review the Department's policy when released.

III. REGISTRAR'S REPORT

Ms. Okuma reported on the following:

- The governor issued an executive order imposing a freeze on hiring until June 30, 2003. There are currently three vacancies at the Board, one clerical, one analyst, and one specialist. Requests for exemptions to the hiring freeze have been submitted to the Department of Finance for the analyst position and the specialist position. If the specialist position is exempted, it will be filled in Southern California. If not filled in six months, the position will be abolished, severely impacting the investigation of consumer complaints, office records checks and probationary checks. Specialists will not be able to maintain their workload and investigate consumer complaints in a timely manner.
- Ms. Okuma and Ms. Saylor attended the Council on Licensure, Enforcement and Regulation (CLEAR) Conference in Texas, which had been postponed from September 12, 2001.

Mr. Patzer reported on the following:

- On January 22, 2002, he will be attending a meeting with Deputy Attorney General Robert Eisman in regards to the development and implementation of a training program for California Code of Regulations section 1999.5, False and Misleading Advertisement. The training will be offered to investigating staff and licensees.
- Due to the hiring freeze, unlicensed activity cases sent to the Division of Investigation (DOI) in Southern California are being returned to the Board. DOI considers these cases low priority. In the last quarter, two cases were returned. Staff is determining how to handle these unlicensed activity cases.

Ms. Saylor reported on the following:

- The licensing statistics and survey results were reviewed with the Board members.
- The Licensing Unit has experienced several lengthy employee absences resulting in job reassignments. Staffs are currently being trained for their new positions.
- The device fund sunseted January 1, 2002. The Board sent a Wood Destroying Pest and Organism (WDO) Program CD-Rom update to all companies filing termite reports. Due to the sunseting of this fund, the new filing fees are \$1.50 per activity.
- The Occupational Analyses for the Branch 3 examinations are almost complete. The Board anticipates having new Branch 3 Field Representative and Operator tests available in six to nine months.

Ms. Okuma updated the Board members on regulatory actions as follows:

- The rulemaking file from the October 2001 public hearing is still being processed for submission to the Department of Consumer Affairs.
- The rulemaking file from the January 2000 public hearing addressing proposed amendments related to filing inspection reports, education requirements for applicators, and an applicator renewal fee, had been returned from the Department of Consumer Affairs because there was not enough supporting documentation to sustain the need for the fee increase or for the applicators to have continuing education. Staff will develop the necessary supporting documentation and the regulation will be noticed for public hearing at the next Board meeting.

Mr. Trongo commented that Pest Control Operators of California (PCOC) and several industry members have been very concerned about toxic and other various molds. He

stated PCOC submitted a recommendation to the Board to consider sending a letter to all licensees.

Ms. Morris commented that the Toxic Mold Protection Act was passed in 2001, and the Department of Health Services is in the beginning stages of implementation.

Mr. Chang suggested the issue be placed on the agenda for the next Board meeting, and that the Registrar address how staff is currently handling inquiries regarding toxic mold. Mr. Chang also recommended that the Board contact the Department of Health Services and ask for a representative to attend the next Board meeting and address this issue.

IV. BOARD MEETING CALENDAR

The next meeting will be April 11 and 12, 2002, in Long Beach. Subsequent dates will be calendared when all Board members are present.

V. APPROVAL OF OCTOBER 18 & 19, 2001 MINUTES

Ms. Melton moved and Mr. Sesay seconded to approve the minutes of the meeting of October 18 and 19, 2001. Passed unanimously.

VI. APPLICATOR EXAMINATION PROGRAM – PROPOSAL TO IMPLEMENT COMPUTER BASED TESTING

Ms. Okuma reported on the Expor Computer Based Testing contract currently in place with the Department of Consumer Affairs and requested the Board consider implementing computer based testing for the Applicator Examination Program.

Mr. Sesay moved and Mr. Morris seconded to authorize the registrar and staff to further explore computer based testing for Applicators. Passed unanimously.

VII. FEE COMMITTEE RECOMMENDATIONS

Ms. Saylor reported that the Fee Committee met and developed a proposed restructured fee schedule. The Department of Consumer Affairs has recommended to not move forward with a fee bill at this time as the current administration has indicated it may not favor fee increases.

Ms. Melton moved and Mr. Sesay seconded to postpone this issue indefinitely. Passed unanimously.

VIII. REQUEST THAT LICENSE HISTORIES REFLECT INSURANCE ERROR INFORMATION - JOHN VAN HOOSER

John Van Hooser requested that the certified license history for Discount Fumigation issued by the Board reflect that an insurance suspension was the result of an error by the insurance company.

The Board took no action.

IX. RECOMMENDATION TO RE-ADOPT PROCEDURE NO. L-6, CONTINUING EDUCATION EXEMPTIONS FOR ARMED SERVICES PERSONNEL

Ms. Saylor reported that licensees who were recently called to service in the Armed Forces have inquired whether there will be an exemption from having to meet the continuing education renewal requirements. She recommended the Board re-adopt Procedure No. L-6 to allow for this exemption.

Mr. Traum moved and Ms. Melton seconded to re-adopt Procedure No. L-6, Continuing Education Exemptions for Armed Services Personnel. Passed unanimously.

X. APPROVAL OF STRATEGIC PLAN

Ms. Okuma reported that the Strategic Plan was prepared by Ken Miller, Department of Consumer Affairs, and staff would be meeting with Mr. Miller on January 23rd to develop the Action Plan.

Mr. Traum moved and Mr. Morris seconded to adopt the Strategic Plan. Passed unanimously.

XI. STAFF RECOMMENDATION TO DEVELOP PROPOSED REGULATION TO REQUIRE DISCLOSING PRIOR INSPECTIONS ON NEW ORIGINAL INSPECTION REPORTS

Mr. Morris moved and Mr. Sesay seconded to table this issue until the next meeting, when more information could be presented. Passed unanimously.

XII. PROPOSAL FOR EXEMPTION FROM CONTINUING EDUCATION REQUIREMENT FOR PERSONS HOLDING A LICENSE FOR A SPECIFIED PERIOD OF TIME

Mr. Trongo proposed an exemption from continuing education for structural pest control licensees who have been licensed for a period of time.

Mr. Morris moved and Ms. Melton seconded to postpone this issue indefinitely. Passed unanimously.

XIII. PROPOSAL TO DISCONTINUE REQUIRING PROOF OF CONTINUING EDUCATION AT TIME OF RENEWAL AND RETURN TO SELF-CERTIFICATION AND AUDIT

Ms. Okuma requested the Board discontinue requiring licensees to submit photocopies of continuing education certificates at the time of renewal, and return to a random audit to verify that licensees have met their renewal requirements.

Mr. Traum moved and Ms. Melton seconded to adopt the proposal to discontinue requiring proof of continuing education at time of renewal and return to self-certification and random audit. Passed unanimously.

XIV. REVIEW OF PROCEDURE NO. E-8 – BOARD REVIEW OF CLOSED COMPLAINTS

Ms. Okuma asked the Board if closed consumer complaint data should be provided to the Board members for the purpose of a random review of closed cases by two Board members.

Mr. Morris moved and Mr. Traum seconded to repeal Procedure No. E-8 - Board Review of Closed Complaints. Passed unanimously.

XV. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

John Van Hooser, Ultratech Division, commented that the Board might want to consider adopting the procedure of the Contractor's State License Board, whereby licensees meeting a certain criteria are used as experts to investigate complaints. In like manner, a group of licensees could be developed who would go out and investigate complaints on behalf of the Board. He also mentioned that there is a registered pest control company attending real estate meetings and making false statements regarding mold. He recommended that questions regarding mold be referred to the Department of Health Services' web site.

Robbie Fouts, Hitmen Termite and Pest Control Inc., commented that there is a new booklet released by the Department of Health Services entitled Environmental Hazard and Earthquake Safety, which is also available on the internet. It states that mold can cause structural damage, is a wood-destroying organism and if left untreated can cause structural damage. He stated we could no longer circumvent this issue and be reactive. The Board needs to be proactive. He does not want the Department of Health Services dictating how to do repairs.

Harold Matzen, Matzen Pest Control, Chairman of Vintage Coastal District, thanked the Board for bringing the meeting into the district, thereby allowing district members to attend. As a general contractor, he receives newsletters from the Contractor's State Licensing Board and always sees unlicensed activity in the action list. He asked why the Structural Pest Control Board does not publish that information. He and others have run into people operating without a license, but do not report them because nothing is done. He commented he had only one complaint against him that was subsequently dropped, so, statistically he could drop his license at this point. Although he has been doing pest control for 40 years and intends to work for 10 more years, he could spend that 10 years operating a business without a license and not have anything happen to him. At this particular point, he stated, the only benefit to him to be licensed by the Board is that he can hold an office in the Pest Control Operators of California. His point was the Board needed to further pursue unlicensed activity.

Ms. Okuma responded that Mr. Patzer will develop a protocol for investigating unlicensed activity and bring it to the Board.

XVI. CLOSED SESSION

The Board adjourned to closed session to consider administrative actions in accordance with subdivision (c)(3) of section 11126 of the Government Code.

Mr. Trongo adjourned the meeting at 11:58PM.

KEN TRONGO, President

KELLI OKUMA, Registrar

DATE